

IN THE
Supreme Court of the United States

AVON CAPITAL, LLC, A WYOMING LIMITED
LIABILITY COMPANY,

Petitioner,

v.

UNIVERSITAS EDUCATION, LLC,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

The questions presented are:

Did the Tenth Circuit err in remanding the case to the district court without instructions to dismiss the case when the New York judgment was refiled before the mandate for the Tenth Circuit order finding mootness was issued and where to require a dismissal would result in substantial waste of judicial assets and judicial inefficiencies and be inequitable to the Respondent seeking to recover assets acquired by Petitioner with funds stolen from it?

Did the Panel for the United States Court of Appeals for the Tenth Circuit (*Tenth Circuit”) err by allowing Universitas Education, LLC (“Universitas or Respondent”) to refile a valid New York federal judgment in an Oklahoma proceeding to enforce the judgment before the mandate issued for a decision that found that the underlying proceeding was moot because the Oklahoma statute of limitations had run?

Did the Tenth Circuit err by asserting jurisdiction over Petitioner after the New York judgment was refiled where Petitioner had intervened and fully participated in the original case for over five years and was found to be an alter ego of the judgment debtor?

Did the Tenth Circuit err in finding that Respondent under Oklahoma law was not required to refile the New York judgment as a new case, and that even if such a requirement existed, the Tenth Circuit would still be in substantial compliance with Oklahoma statute section 12-735(B). by allowing the refiling of the judgment in the same proceeding?

CORPORATE DISCLOSURE STATEMENT

Respondent Universitas Education, LLC has no parent company or publicly issued stock and no public company owns 10% or more of its stock (or membership interests).

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STATEMENT OF THE CASE

I. Background

Petitioner is owned and controlled by Daniel Carpenter, a felon convicted of fifty-seven counts of money laundering, illegal monetary transactions, and conspiracy to commit money laundering directly related to the theft of \$30 million from the Respondent in 2009. Respondent was the beneficiary of life insurance policies placed in the Charter Oak Trust, which was controlled by Mr. Carpenter, and by Nova Group, another one of the companies that he owned and controlled. In the criminal case, Petitioner was described as an important player in Mr. Carpenter's scheme to hide the proceeds of the theft from the Respondent. *United States v. Carpenter*, 190 F.Supp.3d 260 (D.Conn.2016), *aff'd sub nom United States v. Bursey*, F.App'x 1 (2d Cir. 2020), *cert. denied Carpenter v. United States*, 144 S.Ct. 820 (2020). Respondent obtained judgments in New York against Mr. Carpenter for \$30.6 million, and against other entities included in the scheme, including a \$6.7 million judgment against *Avon Capital LLC*, which was used to purchase a portfolio of insurance policies by Petitioner from SDM Holdings, an Oklahoma limited liability company. App.7(a).

The judgments against Mr. Carpenter and Avon Capital have remained unsatisfied. Since the portfolio of insurance policies owned by Petitioner were purchased with funds stolen from Universitas, it filed an action in Oklahoma to enforce the judgment, by garnishing SDM Oklahoma, which held the policies and was 100% owned by Petitioner. Petitioner intervened in the lawsuit and moved to enjoin Respondent from executing the judgment

against it, claiming that neither it nor SDM were judgment debtors. App.88(a)-89(a).

Petitioner moved for post judgment discovery to examine Avon Wyoming's relationship with other Avon Capital entities, including the judgment debtor. Following discovery, Universitas moved for summary judgment to pierce the corporate veil of Petitioner in order to find it to be an alter ego of the other Avon entities, including the judgment debtor. The alter ego issue was initially raised by Avon Wyoming in its motion to enjoin Respondent from gaining access to the SDM policies. Petitioner not only opposed the Respondent's motion for summary judgment, but also filed its own motion for summary judgment. The case was assigned by the district judge to a magistrate for the issuance of a report and recommendation, and the case was litigated for over five years.

The magistrate's decision was issued on October 20, 2020. (App.73(a)). In that decision, the magistrate took judicial notice of related prior decisions and proceedings in New York and considered the other evidence offered by the parties. The magistrate not only traced the funds stolen from Universitas to the purchase of the SDM Oklahoma portfolio of insurance policies, but also found that Mr. Carpenter and his affiliates exercised control over both Avon Wyoming and SDM Oklahoma. She applied Wyoming law and determined that it was appropriate to pierce the corporate veil of Avon Wyoming and that it was an alter ego of the other Avon Capital entities, including the judgment debtor. She recommended granting the Respondent's motion for summary judgment and denying the Petitioner's motion for summary judgment (App.73(a)).

On February 11, 2021, The Honorable Judge Joseph Heaton issued an opinion “readily” adopting the magistrate’s decision. He pierced the corporate veil of Petitioner and enjoined the transfer of any of Petitioner’s or SDM’s assets, i.e., the insurance portfolio or Petitioner’s 100% membership interest in SDM. Both Avon Wyoming and SDM appealed the district court’s decision. App.68(a)-71(a).

On appeal to the United States Court of Appeals for the Tenth Circuit (“Tenth Circuit”), Petitioner and SDM argued, *inter alia*, that the district court lost jurisdiction in December, 2020, since Oklahoma law provides that actions to enforce judgments must be decided within five years. The district court’s order was issued less than two months after the deadline. SDM and Petitioner argued that Respondent needed to refile the judgment before the expiration of the deadline.

The Tenth Circuit agreed, and reversed the district court on that basis. Specifically, the Tenth Circuit’s ruling was as follows:

We vacate the district court’s February 11, 2021 order for lack of jurisdiction: we find the underlying dispute was moot at the time of decision due to the expiration of Universitas’s Western District of Oklahoma’s judgment. We remand the case to the district court to conduct further proceedings. (App.37(a)-38(a)

Before the mandate issued for this order, Universitas refiled the New York judgment in the same proceeding. Judge Heaton held a status conference where all parties were given an opportunity to state their arguments as to what the district court should do on remand.

There is no binding authority requiring Universitas to refile the judgment in a new case, and here, where the parties had litigated the case for over five years and had a full and fair opportunity to be heard, the judge adopted again the magistrate's report and recommendation, and continued the injunction against the disposition of assets of Avon Wyoming and SDM. He found that to "start over," as Petitioner had suggested, would be a waste of judicial resources and unfair to Universitas. He made the effective date of his order the same date as the mandate of the Tenth Circuit order's ruling on the loss of jurisdiction because of the Oklahoma statute of limitations. (App.62(a)), and found that the refiling of the New York judgment reestablished the court's jurisdiction to decide the case. App.62(a)-64(a).

Petitioner appealed this order to the Tenth Circuit. This time, the Tenth Circuit affirmed the district court's order on remand adopting the Magistrate's report granting Universitas's motion for summary judgment. The Tenth Circuit rejected the arguments of Petitioner that the district court was required to dismiss the action in light of its earlier decision on the Oklahoma statute of limitations because the refiling of the judgment restored jurisdiction. App.4(a).

REASONS FOR DENYING CERTIORARI

"Review on a writ of certiorari is not a matter of right but of judicial discretion" (U.S. Sup.Ct.R.10). Generally, in determining to hear a case, this Court considers whether a United States court of appeals has, *inter alia*, "entered a decision in conflict with a decision of another United States court of appeals on the same important matter, has so far departed from the accepted and usual course

of judicial proceedings . . . so as to call for an exercise of [the Supreme Court's] supervisory power, or if a United States court of appeals has decided an important federal question . . . in a way that conflicts with relevant decisions of [the Supreme Court] U.S.Sup.Ct.R. 10(a) and 10(c). Petitioner fails on all three counts.

Petitioner cites no case to support its position that although it vigorously litigated this case for over five years before the issuance of the first decision of the Tenth Circuit, and the New York judgment sought to be enforced is still valid, the court must start over with a new proceeding and disregard the voluminous record in this case. Petitioner's argument is a series of conclusory statements, such as where the court once lacks jurisdiction, it can never cure the jurisdictional defect no matter what the circumstances are, and that it must be served with process again, where its participation constituted a clear waiver of personal jurisdiction objections. The best that Petitioner can muster is to rely on dicta from a lower state court in Oklahoma referring to the institution of a new case upon refiling a foreign judgment, a principle never endorsed by the Oklahoma Supreme Court and which, even if were the law in Oklahoma, could properly be rejected under the facts of this case. *See* F.R.C.P. 69.

The case does not present any conflict with other circuits and does not involve an important question of federal law. As explained by the Tenth Circuit, its opinion is fully consistent with decisions of this Court which recognize that in certain circumstances, jurisdictional defects can be cured where, absent the cure, the goals of judicial economy and efficiency would be frustrated, and the equities lie with the party that would be forced

to relitigate from scratch. Significantly, the issue has not been addressed directly by the Oklahoma Supreme Court, so it can hardly be characterized as an important question of federal law. App.19(a)-20(a). The principal issue is one of Oklahoma law, and the absence of any cases directly on point suggest it is an infrequent occurrence at best.

ARGUMENT

Under Oklahoma statute section 12-735(B), “a judgment shall become unenforceable and of no effect more than five (5) years have passed from the date . . . the garnishment summons was issued.” The original judgment in this case expired on December 3, 2020, and the district court’s order issued on February 14, 2021. The Tenth Circuit found that in the absence of a refiling of the New York judgment, the district court lost jurisdiction in December, 2020. (App.9(a)-10-(a).On the same day as the Tenth Circuit’s ruling on July 13, 2023, Universitas renewed its summary judgment (and receivership) motions and refiled the New York judgment App.10(a).

While Petitioner conceded that Universitas had the right to refile the judgment, it argued that the judgment must be refiled as a new case. The only case authority offered for this position is dicta in a lower court decision in Oklahoma. *Yorkshire West Capital, Inc. v. Rodman*, 149 P.3d 1088 (Okla. Civ. App. 2006). The Oklahoma Supreme Court has never adopted such a rule.

On remand, the Tenth Circuit ordered the district court “to conduct further proceedings.” Petitioner’s central argument in its petition is that the Tenth Circuit erred by not instructing the district court to dismiss the

case. It cites a single Supreme Court case where such instructions were given (*see* Petition for Certiorari, p.11; *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 n.2 (1950). But *Munsingwear* did not hold that once a case is rendered moot, it must be dismissed. The Court stated that customarily it vacated the opinions and remand with direction to dismiss, but noted that there were exceptions to the general rule. *Id.* at 39-40(a)

The Tenth Circuit fully considered *Munsingwear* but focused on exceptions to the general rule.

It found that, based on the facts of this case, Petitioner's position finds no support in this Court or appellate decisions. First, the remand in the mandate carried no such prescription. The law in the Tenth Circuit and other courts of appeal provides that unless the district court's discretion is specifically cabined, it may exercise discretion on what may be heard. *See, e.g., Schweiber Foods, Inc. v. Beatrice Cheese, Inc.*, 402 F.3d 1198, 1203 (Fed. Cir. 2005). It then focused on the cases where this Court also has permitted cures of jurisdictional and standing deficiencies by permitting a case to proceed by joining parties with standing where the original plaintiffs may have lacked standing. *Mullaney v. Anderson*, 342 U.S. 415, 416-17 (1952). As the Tenth Circuit stated,

“In other circumstances, the Supreme Court has allowed parties to cure their jurisdictional deficiencies while on appeal, rather than require new plaintiffs to start over in the district court, which would “entail needless waste and runs counter to effective judicial administration”

Mullaney v. Anderson, 342 U.S. 415 (1952). App.18(a)-19(a).

The Tenth Circuit correctly held that, while none of the cases were directly on point, they demonstrate the discretion that an appellate court has in issuing instructions to a lower court. Such a ruling here would lead to an unfair and unwarranted result.

With respect to Petitioner's argument that Universitas lost its personal stake once the case became moot, the Tenth Circuit relied, *inter alia*, on *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, at 482 (1990); *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 73 (1996) where this Court held that "considerations of finality, efficiency, and economy" overwhelmed concerns about jurisdictional defects that were cured before trial." App.20(a)

It correctly held that

"many courts, including the Supreme Court in *Lewis*, have allowed a temporary lapse in jurisdiction which renders moot any orders issued during the lapse, to be cured before the case is dismissed." (App.19(a)-20(a)

In *Mullaney*, this Court held that original plaintiffs lacked standing but substitute plaintiffs were proper, and "to dismiss the present petition and require new plaintiffs to start over in the district court "would entail needless waste and run counter to effective judicial administration."

App.18(a)-19(a). These principles are especially apt here, where the parties have litigated for over five years

over the satisfaction of a judgment related to funds stolen in 2009.

Having found that federal law did not bar the district judge's decision, the Tenth Circuit turned to state law. The Oklahoma Supreme Court ruled that judgments valid in other states could be refiled after the Oklahoma statute of limitations had run on the original filing. *Taracorp Ltd. v. Dailey*, 419 P.3d 217 (Okla.2018). There is no statutory or binding case law to the contrary. As to whether state law required the filing of a new case, The Tenth Circuit held that a new case number was not a jurisdictional requirement, as the Oklahoma Supreme Court has never made such a ruling. Even if such a rule were in place, the Tenth Circuit held that the "substantial compliance" feature of F.R.C.P.69 would be satisfied even if a new proceeding was not initiated. It noted that Rule 69 (a) is "not meant to put the judge into a procedural straitjacket and requires only compliance with the spirit of the rules." App.22(a)-23(a). As the court of appeals also noted, Petitioners could not give any justification for requiring that a new proceeding be instituted. That is because no such justification exists.

Finally, Petitioner's argument that it needed to be served with a complaint after the first decision of the Tenth Circuit is specious. Personal jurisdiction can be waived by participation in a case. Generally a party must diligently pursue personal jurisdiction defenses and its failure to do so in the first significant defensive move is considered a waiver of its defenses. *See Insurance Corp. of Ireland Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703-05 (1982) Petitioner's full participation in this case defeats any claim for a lack of personal jurisdiction. As the

Tenth Circuit held, “a proceeding that involves notice, an adversary hearing, an opportunity to examine witnesses, representation by counsel, and appellate review is more than sufficient for federal due process. *See Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 484 (1982). (App.27(a))

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be denied.

DATED: June 2, 2025

Respectfully submitted,

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